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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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BY HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: MM Docket No. 93-254

Dear Mr. Caton:

Transmitted herewith for filing with the Commission on behalf of Eagle Communications, Inc.; KICU, Inc.; Paramount Stations Group Inc.; Photo Electronics Corporation; Precht Television Associates, Inc.; Ramar Communications, Inc; Sarkes Tarzian, Inc.; WEVV, Inc; and WKRG-TV, Inc., licensees of broadcast television stations in varying size markets located throughout the United States, are an original and four copies of their Joint Reply Comments with respect to the Notice of Inquiry in the above-referenced proceeding concerning limitations on commercial time on television broadcast stations.

In the event that there are any questions concerning this matter, please contact the undersigned.

Very truly yours,



Sally A. Buckman

SAB/gfe
Enclosure

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Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Limitations on Commercial Time)
on Television Broadcast Stations)

MM Docket No. 93-254

To: The Commission

JOINT REPLY COMMENTS

The undersigned Joint Commenters, by their attorneys, hereby submit these reply comments in response to the Notice of Inquiry in the above-captioned proceeding (FCC 93-459, released October 7, 1993) (the "NOI"). The Joint Commenters are the licensees of television broadcast stations in varying size markets located throughout the United States. For the reasons set forth below, the Joint Commenters submit that those parties who filed comments supporting the reimposition of some type of commercial limits have completely failed to demonstrate that marketplace forces are ineffective in regulating the amount of commercialization on television stations or that the

reestablishment of commercial limits would serve the public interest in any way.

In their comments in the above-captioned proceeding, Joint Commenters demonstrated that: reimposition of any type of commercial limits would affirmatively disserve the public interest; marketplace forces and audience tolerance levels effectively regulate levels of commercialization; and commercial limits would infringe on broadcasters' First Amendment rights and impair the television industry's competitive position vis-a-vis that of cable operators and other video providers who would not be subject to such restrictions. The few commenters in this proceeding who support reimposition of commercial limits offer no evidence to dispute the points made by the Joint Commenters. Significantly, the overwhelming majority of Commenters persuasively demonstrated that reimposition of commercial limits would be contrary to the public interest.

In their comments, the Center for the Study of Commercialism, Center for Media Education, Consumer Federation of America and Office of Communication of the United Church of Christ (hereinafter collectively referred to as "CSC") claim that there is an excessive and harmful amount of commercial matter

presently being broadcast. CSC Comments at 6-8. Yet, they provide absolutely no evidence to support this contention.^{1/} To the contrary, as the Commission predicted in its television deregulation proceeding in 1984, marketplace forces and audience tolerance levels have controlled the amount of commercials in television programming. As broadcast stations face increasing competition for viewers, licensees clearly realize that if a viewer believes a particular program contains too many commercials, he or she will simply switch channels or stop watching. In part because of such marketplace forces, the amount of commercial time contained in half-hour programs broadcast on the stations owned by the Joint Commenters is almost never greater than -- and is usually less than -- the eight minutes per half hour permitted under the processing guidelines previously enforced by the Commission.

^{1/} CSC's comments are primarily devoted to a lengthy discussion of extraneous issues that are completely irrelevant to the scope of the NOI. Indeed, CSC improperly uses the NOI as an opportunity to reargue matters which are the subject of numerous other petitions that it has filed. See CSC Comments at 1 n.1. Because the Commission has intentionally limited the scope of the NOI, Joint Commenters herein address only those matters which are relevant to the NOI.

In arguing for reimposition of commercial limits, CSC claims that excessive advertising, such as home shopping programming and infomercials, takes up broadcast time which could be used to better serve the public. CSC Comments at 4, 6-7. Contrary to CSC's claims, however, without public support and interest, home shopping programming and infomercials would not survive. Indeed, CSC has not provided any evidence that the public shares CSC's dislike of this programming or considers it to represent excessive commercialism. To the contrary, the Commission itself has emphasized that "market forces have revealed a desire among a significant number of television viewers for home shopping programming. We find no reason to believe that home shopping stations would survive in an increasingly competitive video marketplace if viewers were dissatisfied with their level of commercialization." In re Implementation of Section 4(g) of the Cable Television Consumer Protection and Competition Act of 1992, 8 FCC Rcd 5321, 5326-27 (1993).

Further, as Joint Commenters explained in their comments, the proliferation of longer length commercial programming, including home shopping and infomercials, is

consistent with one of the goals which the Commission pursued in eliminating the commercial limits -- to increase commercial flexibility and allow stations to provide innovative and detailed commercials. Commercial Television Stations, 98 F.C.C.2d 1076 (1984), recon. denied, 104 F.C.C.2d 358 (1986), aff'd in part, remanded in part sub nom. Action for Children's Television v. FCC, 821 F.2d 741 (D.C. Cir. 1987). In addition, the Commission recognized that the commercial limits could "interfere with the natural growth and development of broadcast television as it attempts to compete with future video market entrants." Id. at 1104. Home shopping programming and infomercials are one example of such development. See also, e.g., Comments of CBS at 4; Comments of NAB at 11-14.

Ignoring completely the fact that infomercials would not be aired if viewers were not interested in watching them, CSC claims that commercial limits are necessary to prevent the airing of infomercials because they are deceptive. CSC Comments at 8-9. This claim has no merit. As Joint Commenters explained in their comments, rules and procedures exist to prevent deception in any form of commercial programming, regardless of its length. See Comments at 7-8. The Federal Trade Commission has been active in

enforcing claims with respect to deceptive advertising, especially as to program length commercials. Further, with respect to infomercials, the National Infomercial Marketing Association has adopted its own Policy and Guidelines to assist members in avoiding consumer confusion or misunderstanding. And, finally, the Commission's sponsorship identification requirements ensure that viewers are informed of the sponsored nature of program length commercials.

Not only does CSC fail to provide any data or documentation to demonstrate that the public considers the amount of commercials currently contained in television programming to be excessive, CSC also contends that "the result of [the] excessive amount of commercial material is that less air time is available for broadcasting programming that informing (sic) the electorates, discusses controversial issues, presents diverse viewpoints, addresses local issues, and educates and informs children and adults." CSC Comments at 8. The comments filed by the United States Catholic Conference ("USCC") make the same argument. However, both sets of comments are totally devoid of any foundation for this conclusory assertion.

Indeed, it is likely that the reimposition of commercial limits by the FCC would have the opposite effect. As the Commission has acknowledged, the sources of video programming available to consumers have grown exponentially in the past decade, and the television industry faces more competition now than ever. Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221 ("MM Docket No. 91-221") (FCC 92-209, released June 12, 1992) at 3; See generally, F. Setzer and J. Levy, Broadcast Television in a Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 6, 6 FCC Rcd 3996 (1991). In MM Docket No. 91-221, the Commission observed that "[d]eclining audience shares have been reflected in declining advertising revenues for broadcast television stations and networks.... Real advertising revenues per station have fallen by roughly four percent per year from 1987 on.... As a result, profits of broadcast television stations also have declined steadily in recent years." Id. at 4. As Joint Commenters previously explained, the reimposition of commercial limits would greatly exacerbate this decline and place broadcasters at an even greater disadvantage vis-a-vis cable operators and other video providers. If the advertising revenues

stations receive decline more quickly because commercial limitations are imposed, stations will be forced to cut costs even further. These cuts would no doubt force broadcasters to reduce the amount of news, public affairs and children's educational programming that is now broadcast because these types of programming are particularly expensive to produce. In fact, as noted in the Joint Comments, without the revenues it receives from infomercials, one of the Joint Commenters -- WEVV, Inc. -- would be unable to continue to produce a local newscast. Joint Comments at 13-14.

In conclusion, neither CSC nor USCC has provided any support or documentation for the contentions that there is currently an excessive amount of commercial programming being broadcast, that existing amounts of commercial content harms the public, or that the reimposition of commercial limits would provide any meaningful benefit to the public. In fact, no evidence at all has been presented in this proceeding that the public interest is harmed by allowing the marketplace to govern the amount of commercials television stations broadcast. Accordingly, for the reasons set forth herein and in their

Comments, the Joint Commenters respectfully request that the Commission not impose any form of commercial advertising limits.

Respectfully submitted,

EAGLE COMMUNICATIONS, INC.,
license of stations KECI-TV,
Missoula, Montana, KCFW-TV,
Kalispell, Montana, and KTVM(TV),
Butte, Montana

KICU, INC.,
licensee of station KICU-TV,
San Jose, California

PARAMOUNT STATIONS GROUP INC.,
and its subsidiaries, licensees
of stations KRRT(TV), Kerrville,
Texas, KTXA(TV), Arlington,
Texas, KTXH(TV), Houston, Texas,
WDCA(TV), Washington, D.C.,
WKBD(TV), Detroit, Michigan,
WLFL(TV), Raleigh,
North Carolina, and
WTFX(TV), Philadelphia,
Pennsylvania

PHOTO ELECTRONICS CORPORATION,
licensee of station WPEC-TV,
West Palm Beach, Florida

PRECHT TELEVISION ASSOCIATES, INC.,
licensee of station KIEM(TV),
Eureka, California

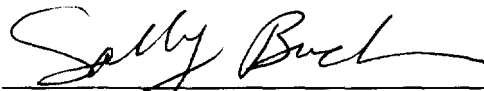
RAMAR COMMUNICATIONS, INC.
licensee of stations KJTV(TV),
Lubbock, Texas and KKIK-TV,
Albuquerque, New Mexico

SARKES TARZIAN, INC.,
licensee of stations KTVN(TV),
Reno, Nevada and WRCB-TV,
Chattanooga, Tennessee

WEVV, Inc.
licensee of station WEVV(TV),
Evansville, Indiana

WKRK-TV, INC.
licensee of station WKRK-TV,
Mobile, Alabama

By:



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February 4, 1994

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CERTIFICATE OF SERVICE

I, Genevieve F. Edmonds, hereby certify that true and correct copies of the foregoing "Joint Reply Comments" were sent by first-class postage prepaid mail this 4th day of February 1994 to the following:

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